

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:01-cr-00385-KJD-EJY
2:01-cr-00449-KJD-EJY

V.

ROBERT CARL KINDELL.

Defendant.

Order – Denying Motion for Temporary Release

Presently before the Court is Defendant Robert Kindell's Motion for Temporary Release (#70).¹ The Government filed a response in opposition (#73) to which Defendant replied (#74). For the reasons stated below, Defendant's motion is denied.

I. Factual and Procedural Background

On August 8, 2002, Defendant was sentenced in the District of Nevada to concurrent 240-month terms of imprisonment for Armed Bank Robbery and Bank Robbery in case numbers 2:01-cr-00385-KJD-EJY and 2:01-cr-00449-KJD-EJY, with five years of supervised release to follow. (#19; #73, at 1-2). Defendant commenced his supervised release on November 1, 2019, and four years into his term, he sustained an injury to his hand while at work. (#70, at 2). Although his injury has slightly improved, it has been medically recommended that his injured finger undergo amputation. See id. at 2-3. However, before he could undergo hand surgery, Defendant was arrested by the Reno Police Department for the offense of prohibited person in possession of a firearm. Id. Following his arrest, Defendant was indicted by a federal grand jury in Reno, Nevada for one count of Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1). (#73, at 2). Defendant made his initial appearance in Las Vegas on December 22, 2023, case number 3:23-cr-00039-ART-CLB, at which point the court ordered him detained until

¹ Defendant filed a duplicate motion for release in case number 2:01-cr-00449-KJD-EJY; as such, this order will serve as an adjudication on both pending motions.

1 his forthcoming trial. Id. Defendant now moves for temporary release under 18 U.S.C. § 3142(i)
 2 so that he may undergo hand surgery in Reno. (#70, at 1). Furthermore, as exhibits to his motion
 3 contain personal and medical information, Defendant requests the Court permit him to file these
 4 exhibits under seal. (#71).

5 II. Legal Standard

6 Title 18 U.S.C. § 3142(i) provides:

7 The judicial officer may, by subsequent order, permit the temporary release
 8 of the person, in the custody of the United States marshal or another
 9 appropriate person, to the extent that the judicial officer determines such
 10 release to be necessary for preparation of the person's defense or for another
 compelling reason.

11 In addressing a motion for temporary release under § 3142(i), limited authority exists as to
 12 when release is justified based on “another compelling reason.” United States v. Terrone, 454 F.
 13 Supp. 3d 1009, 1018 (D. Nev. 2020); see United States v. Cox, 449 F. Supp. 3d 958, 962-63 (D.
 14 Nev. 2020). Although some courts have found that a defendant’s medical condition may qualify
 15 as a “compelling reason” justifying release. See Cox, 440 F. Supp. 3d at 962-65 (analyzing the
 16 defendant’s argument regarding whether the health risk posed to him by the current COVID-19
 17 pandemic is a compelling reason to temporality release him). Furthermore, a motion for
 18 temporary release cannot be analyzed in a “vacuum.” Id. 962. Determining whether release is
 19 appropriate necessitates an individualized analysis of the facts of each case. Id. Defendant bears
 20 the burden of establishing circumstances warranting temporary release under § 3142(i). Id.

21 III. Analysis

22 As an initial matter, the Court finds it important to address the recent ruling by Magistrate
 23 Judge Weksler on Defendant’s concurrent motion for temporary release in case number 3:23-cr-
 24 00039-ART-CLB. See United States v. Kindell, No. 3:23-CR-00039-ART-BNW, 2024 WL
 25 841098, at *1 (D. Nev. Feb. 27, 2024). In Kindell, the court held that Defendant’s medical
 26 situation—hand surgery—did not constitute a “compelling reason” for temporary release under §
 27 3142(i), and thus denied his motion. Id. at *3. Generally, federal courts have a “virtually
 28 unflagging obligation . . . to exercise the jurisdiction given to them.” Colorado River Water

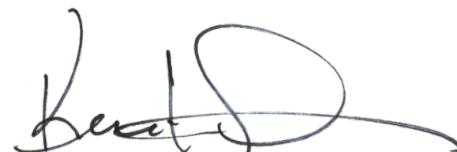
1 Conservation Dist. v. United States, 424 U.S. 800, 817 (1976). However, in situations where
 2 federal courts are simultaneously exercising jurisdiction, the general principle is to avoid
 3 duplicative litigation. Id. Here, the motion filed by the defendant in Kindell and the one currently
 4 pending before this Court appear to be nearly identical. The motions pertain to the same plaintiff,
 5 defendant, legal standard, were filed on the same day, and maintain consistent reasoning—both
 6 seeking release to obtain hand surgery. See Kindell, 2024 WL 841098, at *1; (#70, at 1). The
 7 only difference between the two motions is the procedural posture in which they were brought.
 8 The motion pending before this Court is brought post-trial, whereas the motion ruled on by
 9 Magistrate Judge Weksler was brought pretrial. Procedural posture aside, the Court has no
 10 trouble concluding that Defendant is attempting to litigate the same issue simultaneously in more
 11 than one federal court. And while the Court may simply exercise its jurisdiction and adjudicate
 12 Defendant's motion, “[w]ise judicial administration, giving regard to conservation of judicial
 13 resources and comprehensive disposition of litigation,” advises against such an undertaking. See
 14 Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co., 342 U.S. 180, 183 (1952). Instead, the Court
 15 finds it is squarely within its discretion to defer to Magistrate Judge Weksler's analysis in ruling
 16 on Defendant's pending motion, which, upon review, the Court agrees with. See Kindell, 2024
 17 WL 841098, at *1-4. As such, Defendant's motion is denied.

18 IV. Conclusion

19 Accordingly, **IT IS HEREBY ORDERED** that Defendant Robert Kindell's Motion for
 20 Temporary Release (#70) is **DENIED**, and his Motion to Seal (#71) is **GRANTED**.

21 **IT IS FURTHER ORDERED** that Defendant's Motion for Temporary Release (#50) in
 22 case 2:01-cr-00449-KJD-EJY is **DENIED**, and his Motion to Seal (#51) is **GRANTED**.

23
 24
 25 Dated this 13th day of March 2024.



26
 27 Kent J. Dawson
 28 United States District Judge